121

CF0000059546

Cr. A. 791/98 (2)

APPEAL PRISONER S.T. No. 244/97

No. 827 Name माडवी दुल्ला

Father's Name कोसा Resident ग्राम - पोटनार, इच्छावाडा
ग्राम - भैरमगढ़, बस्तर

Age 30 वर्ष Sentenced to आजीवन कारावास on 10.11.97
सश्रम

Under Section 302 भा० दं० वि० by श्री आर० के० त्रिपाठी सत्र न्यायाधीश जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 10.11.97
3. Date on which appeal sent :- 19.11.97
4. Whether the prisoner wished to be represented or not :- Yes / ~~No.~~

No. 828 Name माडवी दुल्ला s/o कोसा

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 798 / अटेन्डेन्स Dated 19/11/97

Forwarded to the CHIEF JUDICIAL MAGISTRATE जगदलपुर

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
जिला जेल प्रथम श्रेणी
जगदलपुर

Su perintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 4.12.97
Date of receipt-of record to accompany. X
Memo of Appeal of the Appellate Court. Y

(will be in time)

No. 5 (E) dated 5/12/97

Forwarded to the श्रीमान जिला एवं सत्र न्यायाधीश महोदय, जगदलपुर

(महेन्द्र राठौर)
मुख्य न्यायिक मजिस्ट्रेट
जगदलपुर

C. R. MAGISTRATE

Date of receipt in Applieate Court

A.F.R.

(16)

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr.Appeal No. 791/1998

Madvi Dula

Vs.

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
DILIP RAOSAHEB DESHMUKH
Judge

Hon'ble Shri Justice L. C. Bhadoo

Seen

Sd/-
L.C. BHADOO
Judge
21.06.2005

Post for 22.06.2005

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

(17)

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr.Appeal No. 791/1998

Madvi Dula

Vs.

State of Madhya Pradesh (now Chhattisgarh)

CORAM : HON'BLE SHRI L.C.BHADOO,
HON'BLE SHRI DILIP R. DESHMUKH, JJ

Smt. Kiran Jain, counsel for the appellant.
Shri U.N.S.Deo, G.A. for the State.

J U D G M E N T

Per Dilip R. Deshmukh, J.

1. This appeal is directed against the judgment dated 10.11.1997 in session trial No.244/1997 whereby Shri R.K.Shrivastava, Sessions Judge, Bastar (Jagdalpur) has convicted the accused appellant under Section 302 I.P.C. for committing murder of Madvi Hadma on 12.2.1997 in Village Potenar, Ichhawada, P.S. Bhairamgarh, Bastar and sentenced to undergo imprisonment for life.

2. It is not disputed that the appellant and deceased Madvi Hadma were brothers. On 12.2.1997 there was "Chatti" (sixth day ceremony after the birth of a child) in the house of Podiami Lakma. The accused-appellant, deceased Madvi Hadma and witness Madvi Dula (P.W.1) were returning after the ceremony to their village at about 8. P.M. On way, the accused appellant said to his elder brother Madvi Hadma (deceased) that although both had worked

(18)

for the agricultural land, Madvi Hadma had got the Patta made exclusively in his name without giving any land to him for earning his livelihood. Madvi Hadma said that the land was recorded in his name, and therefore, he would not give any portion of the land to the appellant. The appellant got agitated and took out an iron 'Churi' from his waist and stabbed his brother Madvi Hadma in the chest and rib. Madvi Hadma fell down and succumbed to the injuries on the spot. Appellant ran away with his 'Churi'. Witness Madvi Dula P.W.1 saw the entire incident.

3. F.I.R. was lodged by witness Madvi Dula P.W.1 in Police State Bhairamgarh situated 22 kilometers away from the place of occurrence at 10.30 A.M. on 14.2.1997. Dead body of Madvi Hadma was sent for post-mortem examination by Shri M.L.Sharma, Assistant Sub-Inspector P.W.6. Dr. A.S.Sendram P.W.3 who conducted the autopsy on deceased Madvi Hadma found an incised stab wound on the left side of chest at the level of 6th and 7th rib in upward direction size 5" x 1 ½" x 4 ½", one penetrating wound on the left side of chest at the level of 5th intercoastal space size 1 ½" x ½" x 2" and a contusion on the right side of face size 5" x 3". There was fracture of 6th and 7th rib of the left side of chest. The chest cavity was congested and ruptured. Left lung was also ruptured with large quantity of blood on the chest cavity. Apex of the heart was ruptured and profuse blood was found on the chest cavity. Dr. A.S.Sendram P.W.3 opined vide report Ex.P.6 on 15.2.1997 that the injuries caused by hard and sharp object were ante mortem and caused within 60 to 64 hours

(19)

before the autopsy. Death was due to syncope, due to rupture of heart, due to injury No.2 and was homicidal in nature.

4. On 16.02.1997 A.S.I. M.S.Sharma recorded the memorandum Ex.P.8 of the accused appellant and at his instance recovered one iron Churi with blood like stains vide Ex.P.9 on 16.2.1997. Dr. A.S.Sendram after examining the 'Churi' sent to him from P.S. Bhairamgarh opined on 27.2.1997 that injuries sustained by the deceased could be caused by the 'Churi' seized from the accused appellant. After completion of investigation, the appellant was prosecuted for murder of Madvi Hadma.

5. The accused appellant abjured his guilt and did not lead any evidence in defence.

6. Prosecution examined eye witnesses Madvi Dula P.W.1, Madvi Bodo P.W.2 widow of the deceased, Dr. A.S.Sendram P.W.3, interpreter Lachhu Ram P.W.4, Madvi Joga P.W.5 and A.S.I. M.L.Sharma P.W.6 in support of the prosecution case. The trial Court relying upon the unrebutted testimony of the witnesses examined by the prosecution came to the conclusion that the death of Madvi Hadma was homicidal and was intentionally caused by the appellant. It also found that the accused had the motive to kill Madvi Hadma since he had the grievance that the deceased brother had not given to him any land to earn his livelihood. Accordingly, the trial Court convicted and sentenced the appellant as shown in paragraph 1 (supra).

7. Learned counsel for the appellant has assailed the impugned judgment only on two grounds. Firstly, that the testimony of

witness Madvi Dula P.W.1 is not reliable as he could not have seen the occurrence because it was dark at the place of occurrence. Secondly, in the alternative it was contended that the offence was committed without deliberation upon sudden annoyance and the intention to cause death of Madvi Hadma was absent. Therefore, at the most the accused appellant could be found guilty of an offence under Section 304 Part II I.P.C. Learned counsel further contended that the accused appellant was in jail since 16.2.1997 and should be awarded lesser sentence. It was also contended that the appellant and the deceased had consumed liquor at the 'Chatti' ceremony, and therefore, the offence would fall under Section 304 Part II I.P.C.

8. On the other hand, Shri U.N.S.Deo, learned Govt. Advocate laid stress that the prosecution had led legal, reliable and unimpeachable evidence in support of the charge under Section 302 I.P.C. The presence of witness Madvi Dula P.W.1 at the scene of occurrence was not disputed in cross-examination and his testimony is wholly reliable. Dr. A.S. Sendram P.W.3 has established that Madvi Hadma had died a homicidal death due to stab injuries in the chest. The very fact that the injuries were inflicted by a sharp knife on the chest of Madvi Hadma with such force that the 6th and 7th rib on the left chest were fractured, left lung and the apex of the heart were also ruptured clearly established that the injuries were inflicted with the intention to cause the death of Madvi Hadma and with such knowledge that they were likely to cause death. The trial Court, he urged, has

rightly believed the prosecution witnesses and convicted the accused appellant under Section 302 I.P.C.

9. We have considered the submissions of learned counsel for the appellant and the Government Advocate. We have also perused the record and have also minutely gone through the evidence led by the prosecution. So far as the testimony of Madvi Dula P.W.1 is concerned, he is related to both the appellant and the deceased. He does not bear any grudge against the appellant. His presence at the place of occurrence has not been denied in cross-examination. On the contrary it was suggested by the defence that this witness along with the accused appellant and the deceased had consumed liquor and food at the house of Podiami Lakma. The mere fact that the accused appellant and the deceased had consumed liquor at the 'Chatti' ceremony does not lead to the conclusion that they were so heavily drunk that the accused appellant would not have known what he was doing when he assaulted Madvi Hadma with the 'Churi'. It is pertinent to note that in the Post-mortem of Madvi Hadma presence of alcohol in the stomach has not been confirmed.

10. Madvi Dula P.W.1 has deposed that while returning from the 'Chatti' ceremony with the accused appellant Madvi Dula and the deceased Madvi Hadma, the accused had said to the deceased that he had given him lesser land whereupon Madvi Hadma had said that whatever lands could be given have been given. Upon this, the accused took out 'Churi' from his waist and stabbed Madvi Hadma twice on the chest and ran away. Madvi Hadma fell down

and died instantaneously. He then went and told Madvi Bodo P.W.2 that the accused had killed her husband by 'Churi'. Madvi Bodo P.W.2 has also corroborated this witness completely.

11. As regards the argument that Madvi Dula P.W.1 could not have seen the occurrence since the incident took place in the dark night is concerned, it has no force. It is common experience that village folk have the ability to see clearly in darkness. Since they are not victims of environmental pollution due to urbanization and can see and identify clearly even though there may not be street lamps or lights. Witness Madvi Dula P.W.1 on being confronted with this has clearly stated in cross-examination that at the time of occurrence it was not so dark that he could not identify. He has given a very plausible explanation that since he was going with the accused-appellant Madvi Dula and his brother deceased Madvi Hadma he could see the occurrence and identify the accused appellant. This testimony is wholly reliable and inspires full confidence.

12. So far as the delay in lodging the F.I.R. is concerned, the incident took place at about 8.00 P.M. on 12.2.1998 and the F.I.R. Ex.P.5 was lodged at 10.30 A.M. on 14.2.1997 at Police Station Bhairamgarh which is situated 22 kilometers west of the place of occurrence. Since in the interiors of Bastar there is no mode of conveyance, the entire distance has to be covered on foot. Thus, the delay in lodging the F.I.R. is fully explained.

13. The testimony of Dr. A.S. Sendram P.W.3 establishes beyond doubt that Madvi Hadma had sutained two penetrating stab

wounds in the left side of chest which were caused by a hard and sharp object. The gravity and details of the injury sustained by Madvi Hadma has already been noted in paragraph-3 (supra) which leaves no manner of doubt that Madvi Hadma had died a homicidal death.

14. The wholly unrebutted testimony of A.S.I. M.L.Sharma P.W.6 proves that F.I.R. Ex.P.5 was lodged by witness Madvi Dula P.W.1 on 14.2.1997 whereupon he had taken the accused in his custody who had, upon being questioned stated that he had kept the 'Churi' in his waist and had produced it. Seizure of 'Churi' Ex.P.9 has also been fully established by the testimony of this witness.

15. The only question which now remains to be seen is the nature of offence committed by the accused appellant. The prosecution evidence clearly shows that the accused had the grievance that his brother Madvi Hadma had not given him sufficient lands and upon being asked Madvi Hadma had refused to give any. This had agitated the accused appellant and he assaulted Madvi Hadma by a sharp knife i.e. 'Churi' twice on the chest with such force that the 6th and 7th ribs of left side chest were fractured, chest cavity, left lung and apex of the heart were ruptured. The vital part on which the injury was caused and the amount of force with which the accused appellant inflicted two penetrating stab wounds on the left side of chest clearly leads to the irresistible inference that the accused not only intended to cause the death of his brother Madvi Hadma but had also inflicted

(24)

the injuries with full knowledge that they were likely to cause death of Madvi Hadma.

16. The unrebutted testimony of M.L.Sharma P.W.6 establishes beyond doubt that one 'Churi' was recovered at the instance of the accused appellant and was sent to P.H.C. Bhairamgarh and Dr A.S.Sendram P.W.3 has also deposed that injuries sustained by the deceased could be caused by the knife which was sent for examination from P.S. Bhairamgarh.

17. Considering the background and the circumstances in which the incident took place, the intention with which the accused appellant inflicted fatal injuries on the vital part i.e. left side chest of the deceased Madvi Hadma and the amount of force with which the injuries were inflicted, we are unable to subscribe to the arguments of learned counsel for the appellant that the offence falls under Section 304 Part II I.P.C. We accordingly hold that the learned trial Judge has rightly convicted the appellant under Section 302 of the I.P.C.

18. In the ultimate analysis, this appeal has no substance and is accordingly dismissed. Seized articles i.e. soil, Churi be destroyed forthwith.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge